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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,407	07/29/2003	Kiyoshi Kusama	00862.002959.1	6364
5514	7590	07/17/2009	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			HARPER, LEON JONATHAN	
ART UNIT	PAPER NUMBER			
	2166			
MAIL DATE	DELIVERY MODE			
07/17/2009	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/628,407	KUSAMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LEON HARPER	2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 May 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 57,59-65 and 77-86 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 57,59-65 and 77-86 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION*****Response to Amendment***

1. The amendment filed on 5/4/2009 has been entered. Claims 57, 64, 65, 77, 85 and 86 have been amended. No new claims have been added or cancelled. Accordingly, claims 57, 59-65, and 77-86 are pending in this office action.

***Response to Arguments***

Applicant's arguments with respect to claims 57, 59-65, and 77-86 have been considered but are moot in view of the new ground(s) of rejection. In particular, the addition of the communication channel between the image processing apparatus and the image storage apparatus has more clearly defined the separation between the two in terms of what "may" represent material images. Consequently, the new grounds of rejection have been set forth below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 57, 59-65, and 77-86 rejected under 35 U.S.C. 103(a) as being unpatentable over 3, 976, 982 (hereinafter Eiselen) in view of US 6, 134, 347 (hereinafter Niwamoto).

As for claim 57 Eiselen discloses:

An image processing apparatus which combines material images to generate a mosaic in imitation of an original image (See column 2 lines 24-27, column 4 lines 6-12 note combination); An image storage apparatus (See column 3 lines 55-60), and a communication channel between the image processing apparatus and the image storage apparatus (See column 4 lines 60-67).

means for holding scale-down images including color information of each of a plurality of material images, wherein the scale-down images correspond respectively to the plurality of material images (See column 4 lines 50-60); and division means for dividing the original image into a plurality of blocks (See column 4 lines 25-35) and determining means for determining selected material images and their positions such that the selected material images have color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images and the color information of each of the plurality of blocks(See column 1 lines 10-25, column 4 lines 5-10); first output means for outputting the positions of the selected material images determined by the determination means to the

image storage apparatus and wherein the image storage apparatus includes storage means for storing the plurality of material images (See column 1 lines 63-67, column 5 lines 25-29) and second output means for outputting the selected material images determined by the determination means out of the plurality of material images stored in the storage means according to the positions of the selected material images determined by the determination means (See column 1 lines 63-67, column 5 lines 29-36).

Eiselen does not explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (Eiselen discloses black and white which examiner notes is still a type of color). Niwamoto however does explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (See column 2 lines 18-28). It would have been obvious to an artisan of ordinary skill in the pertinent at the time the invention was made to have incorporated the teaching of Niwamoto into the system of Eiselen. The modification would have been obvious because the two references are concerned with the solution to problem of data processing, therefore there is an implicit motivation to combine these references. In other words, the ordinary skilled artisan, during his/her quest for a solution to the cited problem, would look to the cited references at the time the invention was made. Consequently, the ordinary skilled artisan would have been motivated to combine the cited

references since Niwamoto's teaching would enable user's of the Eiselen system to be able to calculate color difference (See Niwamoto column 7 lines 28-35).

As for claim 59 the rejection of claim 57 is incorporated, and further Niwamoto discloses: wherein the color information corresponding to the plurality of material images is obtained from a plurality of scale-down images or a plurality of image characteristic parameters corresponding to the plurality of material images (See figure 4).

As for claim 60 the rejection of claim 57 is incorporated, and further Eiselen discloses: wherein said image processing apparatus further includes receiving means for receiving first information corresponding to the plurality of material images from the image storage apparatus (See figure 4).

As for claim 61 the rejection of claim 57 is incorporated, and further Niwamoto discloses: wherein the receiving means receives the first information corresponding to the plurality material images during activation of said image processing system (See column 8 lines 50-55).

As for claim 62 the rejection of claim 57 is incorporated, and further Niwamoto discloses: wherein the storage means stores the plurality of material images by dividing the plurality of material images into a plurality of groups, and

the determination means determines the selected material images and their positions according to the first information corresponding to a plurality of material images contained in a selected group. (See column 10 lines 5-15).

As for claim 63 the rejection of claim 60 is incorporated, and further Niwamoto discloses: wherein the receiving means receives a mosaic image generated by the first output means (See column 17 lines 45-50).

As for claim 64 the rejection of claim 60 is incorporated, and further Niwamoto discloses: wherein the image processing apparatus receives the material image determined by the determination means from the image storage means by the receiving means and positions the material image received by the receiving means according to the position determined by the determination means to form a mosaic image (See column 19 lines 1-10).

As for claim 65, the rejection of claim 57 is incorporated, and further Niwamoto discloses: wherein a plurality of the image processing means are provided and the image storage means can be shared between said plurality of image processing means (See column 10 lines 5-15).

As for claim 77 Eiselen discloses:

An image processing apparatus which combines material images to generate a mosaic in imitation of an original image (See column 2 lines 24-27, column 4 lines 6-12 note combination); An image storage apparatus (See column 3 lines 55-60), and a communication channel between the image processing apparatus and the image storage apparatus (See column 4 lines 60-67).

and division means for dividing the original image into a plurality of blocks (See column 4 lines 25-35) and determining means for determining selected material images and their positions such that the selected material images have color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images and the color information of each of the plurality of blocks(See column 1 lines 10-25, column 4 lines 5-10); first output means for outputting the positions of the selected material images determined by the determination means to the image storage apparatus and wherein the image storage apparatus includes storage means for storing the plurality of material images (See column 1 lines 63-67, column 5 lines 25-29) Eiselen does not explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (Eiselen discloses black and white which examiner notes is still a type of color).

Niwamoto however does explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (See column 2 lines

18-28). It would have been obvious to an artisan of ordinary skill in the pertinent at the time the invention was made to have incorporated the teaching of Niwamoto into the system of Eiselen. The modification would have been obvious because the two references are concerned with the solution to problem of data processing, therefore there is an implicit motivation to combine these references. In other words, the ordinary skilled artisan, during his/her quest for a solution to the cited problem, would look to the cited references at the time the invention was made. Consequently, the ordinary skilled artisan would have been motivated to combine the cited references since Niwamoto's teaching would enable user's of the Eiselen system to be able to calculate color difference (See Niwamoto column 7 lines 28-35).

As for claim 78 the rejection of claim 77 is incorporated and further Eiselen discloses: means for holding scale-down images including color information of each of a plurality of material images, wherein the scale-down images correspond respectively to the plurality of material images (See column 4 lines 50-60);

As for claim 79 the rejection of claim 77 is incorporated and further Eiselen discloses: An image storage apparatus (See column 3 lines 55-60). Storage means for storing the plurality of material images (See column 3 lines 55-60). second output means for outputting the selected material images determined by the determination means out of the plurality of material images stored in the

storage means according to the positions of the selected material images determined by the determination means (See column 1 lines 63-67, column 5 lines 29-36).

As for claim 80 the rejection of claim 77 is incorporated, and further Niwamoto discloses: wherein the color information corresponding to the plurality of material images is obtained from a plurality of scale-down images or a plurality of image characteristic parameters corresponding to the plurality of material images (See figure 4).

As for claim 81 the rejection of claim 77 is incorporated, and further Eiselen discloses: wherein said image processing apparatus further includes receiving means for receiving first information corresponding to the plurality of material images from the image storage apparatus (See figure 4).

As for claim 82 the rejection of claim 81 is incorporated, and further Niwamoto discloses: wherein the receiving means receives the first information corresponding to the plurality material images during activation of said image processing system (See column 8 lines 50-55).

As for claim 83 the rejection of claim 79 is incorporated, and further Niwamoto discloses: wherein the storage means stores the plurality of material

Art Unit: 2166

images by dividing the plurality of material images into a plurality of groups, and the determination means determines the selected material images and their positions according to the first information corresponding to a plurality of material images contained in a selected group. (See column 10 lines 5-15).

As for claim 84 the rejection of claim 81 is incorporated, and further Niwamoto discloses: wherein the image processing apparatus receives the material image determined by the determination means from the image storage means by the receiving means and positions the material image received by the receiving means according to the position determined by the determination means to form a mosaic image (See column 19 lines 1-10).

As for claim 85, the rejection of claim 57 is incorporated, and further Niwamoto discloses: wherein a plurality of the image processing means are provided and the image storage apparatus can be shared between said plurality of image processing means (See column 10 lines 5-15).

As for claim 86 division means for dividing the original image into a plurality of blocks (See column 4 lines 25-35) and determining means for determining selected material images and their positions such that the selected material images have color information similar to color information of respective blocks divided from the original image based on the color information of each of

the plurality of material images and the color information of each of the plurality of blocks(See column 1 lines 10-25, column 4 lines 5-10); first output means for outputting the positions of the selected material images determined by the determination means to the image storage apparatus and wherein the image storage apparatus includes storage means for storing the plurality of material images (See column 1 lines 63-67, column 5 lines 25-29) Eiselen does not explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (Eiselen discloses black and white which examiner notes is still a type of color). Niwamoto however does explicitly disclose: color information similar to color information of respective blocks divided from the original image based on the color information of each of the plurality of material images (See column 2 lines 18-28). It would have been obvious to an artisan of ordinary skill in the pertinent at the time the invention was made to have incorporated the teaching of Niwamoto into the system of Eiselen. The modification would have been obvious because the two references are concerned with the solution to problem of data processing, therefore there is an implicit motivation to combine these references. In other words, the ordinary skilled artisan, during his/her quest for a solution to the cited problem, would look to the cited references at the time the invention was made. Consequently, the ordinary skilled artisan would have been motivated to combine the cited references since Niwamoto's teaching would enable user's of the Eiselen system to be able to calculate color difference (See Niwamoto column 7 lines 28-35).

### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEON HARPER whose telephone number is (571)272-0759. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*LJH*  
*Leon J. Harper*  
*July 13, 2009*

/Isaac M. Woo/  
Primary Examiner, Art Unit 2166